

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.

<b>PRE-APPEAL BRIEF REQUEST FOR REVIEW</b>		Docket Number (Optional) <b>50277-2343</b>
<p>Pursuant to 37 CFR 1.8(a)(1)(ii) I hereby certify that this correspondence is being transmitted to the United States Patent and Trademark Office via the electronic filing system in accordance with 37 CFR §§1.6(1)(4) and 1.8(a)(1)(i)(C) on the date indicated below and before 9:00 PM PST.</p> <p>on _____</p> <p>Signature _____</p> <p>Typed or printed name _____</p>	Application Number <b>10/718,747</b>	Filed <b>11/21/2003</b>
	First Named Inventor <b>Benny Souder</b>	
	Art Unit <b>2162</b>	Examiner <b>Jean B. Fleurantin</b>
<p>Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.</p> <p>XXX</p> <p>This request is being filed with a notice of appeal.</p> <p>XXX</p> <p>The review is requested for the reason(s) stated on the attached sheet(s).</p> <p>Note: No more than five (5) pages may be provided.</p> <p>XXX</p> <p>I am the</p> <div style="display: flex; justify-content: space-between;"><div style="width: 45%;"><p><input type="checkbox"/> applicant/inventor.</p><p><input type="checkbox"/> assignee of record of the entire interest. See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed. (Form PTO/SB/96)</p><p><input checked="" type="checkbox"/> attorney or agent of record. Registration number <u>42,327</u></p><p><input type="checkbox"/> attorney or agent acting under 37 CFR 1.34. Registration number if acting under 37 CFR 1.34 _____</p></div><div style="width: 50%; text-align: center;"><p>_____ /MarcelKBingham#42327/ Signature</p><p>_____ Marcel K. Bingham Typed or printed name</p><p>_____ (408) 414-1080 Telephone number</p><p>_____ October 22, 2007 Date</p></div></div> <p>NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below*.</p>		

☒ \*Total of 1 forms are submitted.

This collection of information is required by 35 U.S.C. 132. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11, 1.14 and 41.6. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

If you need assistance in completing the form, call 1-800-PTO-9199 and select option 2.

## PRE-APPEAL BRIEF REQUEST FOR REVIEW

The Examiner has committed clearly erroneously factual errors in interpreting cited references. The Examiner has grossly misinterpreted claim limitations, ignoring express limitations, and misapplying the principle of reasonable broad interpretation, reading into this principle permission to make any interpretation of any claim limitation, reasonable or not.

**Claim 1:** Claim 1 recites a database server that imports a tablespace into a local database managed by the database server. Importantly, the database server also causes the tablespace to be transported between a first and second file system. This particular way of automatically provisioning a database is not disclosed or in any way suggested by Bridge.

The Examiner alleges that Bridge, at passage at col. 9, lines 41 – 50, teaches the limitation of a database server causing a tablespace to be transported between file systems. In this passage, the Examiner must be correlating the target database to the claimed database server that imports the tablespace. Note the passage describes a source database system that produces a set of files in response to a user providing the name of the files.

Importantly, the user copies the files "to a place accessible to the target database [sic]." Presumably the user copies the files by manually invoking standard file transfer utilities, such as operating system commands or FTP. The passage however does not suggest in any way much less disclose that the target database server causes the files to be transported.

The Examiner's position is that Bridge teaches transferring a tablespace from a source database to a target database, and alleges that this teaching is read on by a database server causing the tablespace to be transported between file systems.

The Office Action is correct in that Bridge does teach transferring a tablespace from a source database to a target database. However, a general teaching about performing an operation does not by itself inherently disclose or suggest each and every specific way of performing that operation. Disclosure of a genus does not necessarily disclose or suggest every species of the genus. It does not necessarily follow from the fact that a tablespace is transported between file systems that the transporting of tablespaces is being caused by a database server as claimed.

The Examiner also recites the principle that the pending claims must be given the broadest reasonable interpretation consistent with specification. The principle is cited to justify a broad interpretation of the limitation “database server also causes the tablespace to be transported between a first and second file system.” Unfortunately, the Office Action never states what the interpretation is. Nevertheless, Applicant infers from the fact that the Office Action is relying upon the teaching in Bridge about transferring tablespaces between file systems to anticipate claim 1, that the Office Action is interpreting claim 1 as reciting and claiming all ways of transporting tablespaces between file systems.

Such an interpretation ignores express limitations in claim 1, namely that the transporting of a tablespace between file systems is caused by a database server. Because the broad interpretation ignores an express limitation in a claim, the interpretation being applied by the Office Action is not reasonable.

Finally, the Examiner further points out that the principle of broadest interpretation must also be consistent with the interpretation that those skilled in the art would reach. Apparently, the Office Action is alleging that the broad interpretation applied is consistent with that those skilled in the art would reach. However, the Office Action is incorrect.

One skilled in the art would not interpret the limitation of a database server causing a tablespace to be transported between file systems to cover every way of transporting tablespaces or files. For example, one skilled in the art would not interpret a user invoking a file transfer utility to copy files between file systems as being covered by the notion of a database server causing the transportation of tablespaces between file systems.

**Claim 3:** Claim 3, as amended, recites “wherein said routine is written in code that conforms to a database language and that may be executed by a database server.” A routine written in code that conforms to a database language and that may be executed by a database server is not disclosed or suggested in any way by the cited art. The Office Action alleges that this feature is taught by Bridge teaching “executing by processor instructions.” It does not necessarily follow that instructions that are executable by a processor are instructions that conform to a database language, such as PL/SQL.

**Claim 18:** Claim 18 requires that to automatically instantiate a database, that a **database server** cause a file that stores data for a database to be transported between a first and second file system, and then provision the data as at least part of a database managed by a database server. For reasons similar to those discussed with respect to claim 1, the cited art fails to suggest in any way much less disclose this feature of claim 18.

**Claim 20:** Claim 20 recites wherein said “set of one or more files includes metadata describing database objects and **commands for inserting data into the database objects**, wherein the step of provisioning includes **importing** said database data into said **database by executing said commands**.” Note that claim 18, upon which claim 20 depends, recites that the set of one or more files are caused to be transported between file systems by a database server. Files, that are transported between files systems by a database server, and that include commands executed to import database data, is a feature that is not disclosed or suggested in any way by the cited art.

The Examiner alleges that Bridge teaches this feature at col. 3, lines 25 – 34. The passage teaches about modifying disk pointers, transferring disk pointers, and partitioning data into tablespaces. It does not follow from these teachings that files are transported by a database server between file systems, and that the files include commands executed to import database data, as claimed.

**Claim 21:** Claim 21 recites “said set of one or more files includes backup files created by a recovery manager, wherein the step of provisioning includes causing said recovery manager to create said database managed by said database server from said backup files.” This limitation is not suggested much less disclosed by the cited art.

The Office Action alleges that Bridge teaches this feature at col. 6, line 64 to col. 7, line 5. The above passage teaches that disk pointers in recovery logs are stored with the proper TSN (tablespace number). This fails to teach creating a database from backup files. Those skilled in the art know that recovery logs are not backup files. Moreover, the passage does not in any way suggest much less disclose creating a database from recovery logs or backup files.

**Claim 22:** Claim 22 recites “wherein an archive log stores data recording changes to said database made after creating the backup files, wherein the step of provisioning

further includes changing said database to reflect changes recorded in said archive log.” This feature is not suggested in any way much less disclosed by the cited art.

The teaching relied upon for rejecting claim 22 is the same as for claim 21, as described above. That passage does not even describe making changes to a database to reflect changes recorded in an archive log, much less where such a step is performed as part of provisioning database data included in one or more transported files, as claimed. (See claim 18, which claim 22 depends on).

**Claim 7:** Claim 7 has been rejected for obviousness. Claim 7 recites that the "database server provisions a synchronization mechanism that applies changes made to the tablespace to the copy." The Office Action does not allege that Bridge teaches this feature, but does allege that Wang teaches this feature at the passage at col. 14, line 59 to col. 15, line 10.

As mentioned before, terms in computer technology have multiple meanings or senses, like many words of the English language. Synchronization mechanism is one such term. The sense of Wang is different than that required by claim 7.

In Wang, the term's sense is a synchronization mechanism that controls concurrent access to resources such as data. The synchronization mechanism described in the passage is a distributed lock manager that issues locks to synchronize access.

In claim 7, the term's sense is a synchronization mechanism that keeps bodies of data in sync. For example, "synchronization mechanisms can also be automatically provisioned to keep the tablespace and a copy in sync." (Application 0025) A defining feature of such a mechanism is that it "applies changes made to the tablespace to the copy", as claimed. Wang does not teach this kind of synchronization mechanism.

The Office Action alleges that the synchronization mechanism is not defined in a way that removes the reference from reading upon claims. However, this is incorrect. The synchronization mechanism, as expressly defined by the claim, does not read on Wang.

First, the synchronization mechanism as claimed applies changes made to the tablespace to the copy of the tablespace. The synchronization mechanism of Wang only controls access to data, but does not make changes to data.

Second, the synchronization mechanism as claimed is provisioned by a database server. Wang does not teach that the synchronization mechanism it teaches about is provisioned by a database server.